

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals

of

L. N. JESSON AND L. N. JESSON, AS
EXECUTOR OF THE WILL OF MRS. L. N. JESSON

Appearance for Appellant: Dale B. Wolfe, Certified
Public Accountant

Appearance for Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate
Tax Counsel

O P I N I O N

These appeals by L. N. Jesson individually and as Executor of his wife's will are made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on his protests to proposed separate assessments of additional personal income taxes against each of them in the amounts of \$456.85 for 1942 and \$476.29 for 1946,

In 1942 the Jessons reported Alaskan gold mining royalties received of \$57,724.33 from which they deducted \$2,221.45, representing taxes paid to Alaska under the provisions of Sessions Laws of Alaska, 1937, Chapter 20, as amended. In 1946 they reported royalties received of \$56,565.99 and deducted \$1,746.38 as taxes although it is stipulated now that the Alaska tax paid during 1946 amounted to only \$49.40.

The Franchise Tax Board disallowed the deduction of the Alaskan taxes, contending that the royalty tax imposed by Alaska is not deductible in computing net income because such taxes are taxes on or according to or measured by income or profits within the meaning of Section 8(c) of the Personal Income Tax Act (covering 1942) and Section 17305 of the Revenue and Taxation Code (covering 1946). This provision is now Section 17204 of the Revenue and Taxation Code. Appellant disputes this but argues that if the sums are not deductible from income they should be allowed as a credit against the California tax under Sections 25(a) of the Personal Income Tax Act (1942) and 17976 of the Revenue and Taxation Code (1946) - now Section 18001,

The pertinent parts of the statutes involved are as follows:

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(1) The Alaskan tax is imposed by Session Laws of Alaska, 1937, Ch. 20 (as amended, Ch. 54, S.L.A., 1937, Ch. 62, S.L.A., 1939, Ch. 74, S.L.A., 1941).

"Section 1, * **

"Gold, Platinum, Palladium, Osmium, Iriridium and any Other Metal or Mineral Belonging to the Platinum or Palladium Group, The license tax on all gold, platinum, osmium, irridium and other metal or mineral belonging to the platinum or palladium group produced in any mine or mines in the Territory of Alaska, shall be 3% upon the cash value of the gross production in excess of Twenty Thousand Dollars (\$20,000).

"By 'gross production! is meant the total cash value of all of the products taken from any mine or mines.

"Taxes upon royalties shall be paid by the person receiving same and no deduction or exemption is allowed thereon,

***"

(2) The California deduction is allowed by Section 8(c) of the Personal Income Tax Act (as amended 1941) and Section 17305 of the Revenue and Taxation Code (as amended, 1945). The two are substantially the same. Section 17305 of the Revenue and Taxation Code read:

"In computing net income there shall be allowed as a deduction taxes or licenses paid or accrued during the taxable year, except:

"(a) Taxes paid or accrued to the State under this part,

"(b) Taxes on or according to or measured by income or profits paid or accrued within the taxable year imposed by the authority of

(1) The Government of the United States or any foreign country,

(2) Any State, Territory, county, city and county, school district, municipality, or other taxing subdivision of any State or Territory.

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***"

(3) The credit against the California personal income tax is governed by Section 25(a) of the Personal Income Tax Act and Section 17976 of the Revenue and Taxation Code. The two are substantially similar, Section 17976 of the Revenue and Taxation Code read:

"Subject to the following conditions, residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another State or country on income taxable under this part:

***"

We are presented with two issues. First, is the Alaska tax on or according to or measured by income or profits? Second, is it a net income tax? Our answer to the former is "yes" and to the latter "no."

The Alaska tax is, according to a letter from the Tax Commissioner of the Territory of Alaska submitted in evidence by Appellant, a tax for the privilege of engaging in mining "based on Gross Income from mines and mining." Appellant argues that it is deductible because it is a privilege tax. He overlooks the fact that it is not only taxes on income which are not deductible but also taxes measured by or according to income. This is a tax measured by income. Appellant would prevail here only if this were a gross receipts tax such as we held deductible in Appeal of Georgica Guettler and Appeals of Edward and Frieda Meltzer, both decided April 1, 1953. The Alaskan tax, however, unlike the Canadian tax involved in those appeals, is a tax measured by gross income, not gross receipts. Gross receipts taxes are those imposed upon capital as well as income. While economically part of the royalty income of Appellant is undoubtedly a return of capital, it is a well established rule that the concept of taxable income includes all proceeds from the sale of ore. See, e.g., U. S. v. Biwabik Mining Co., 247 U.S. 116 (1918) ; Von Baumbach v. Sargent Land Co., 242 U.S. 503 (1917); Stanton v. Baltic Mining Co., 240 U.S. 103 (1916). Under these decisions of the Supreme Court all royalty income may be taxed as income and here Alaska taxed it. Although the tax was designated a privilege tax, the measure was the gross income. We must conclude, therefore, that the sums paid to Alaska are not allowable as deductions.

Nor can it be held that they are allowable as credits. The credit section is limited to "net income taxes" whereas

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the tax involved in this appeal is clearly a privilege tax measured by *gross* income, as Appellant argued above and as is shown by the provision that "no deduction or exemption" is allowed in computing the tax. See: Appeal of Cornelia and Hans Knudsen, State Board of Equalization, April 1, 1953. The action of the Franchise Tax Board, accordingly, must be sustained,

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board upon the protests of L. N. Jesson and L. N. Jeesson as Executor of the Will of Mrs. L. N. Jesson to proposed assessments against each Appellant of additional personal income taxes in the sum of \$456.85 for the year 1942 and in the sum of \$476.29 for the year 1946 be and the same is hereby sustained.

Done at Los Angeles, California, this 24th day of June; 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

George R. Reilly, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary